

DIVISION 1
PROCEDURAL RULES
Rulemaking

123-001-0050

Definitions

For purposes of this division of administrative rules, and generally throughout this chapter of administrative rules, unless the context demands otherwise:

- 1) Administrator means the Administrator of the Infrastructure Finance Authority.
- 2) Authority means the Infrastructure Finance Authority within the Oregon Business Development Department.
- 3) Board means the Oregon Infrastructure Finance Authority Board.
- 4) Brownfield means real property where expansion or redevelopment is complicated by actual or perceived environmental contamination as defined in ORS 285A.185(1).
- 5) Collateral means property subject to a security interest or security agreement, as defined in ORS 79.1050.
- ~~(6)~~ Commission means the State of Oregon ~~Business Economic and Community~~ Development Commission appointed under ORS 285A.040.
- 7) Department means the State of Oregon ~~Business Economic and Community~~ Development Department as established under ORS 285A.070.
- 8) Deputy Director means the deputy director of the Oregon Business Development Department.
- ~~(39)~~ Director means the director of the Oregon Business Development Department as appointed under ORS 285A.070.
- 10) Distressed Area - means a geographic area within the state of Oregon that meets the criteria set forth under OAR 123-024-0031.
- 11) Finance Committee means the financial committee formed by the Oregon Business Development Commission as defined in OAR 123-001-0520.
- 12) Financial Institution means a financial institution as defined in ORS 706.008.
- 13) First Source Hiring Agreements means the hiring agreements as described in OAR 123-070.
- 14) Grant means an award of monies to an approved recipient for eligible purposes.
- ~~(415)~~ Governor means the sitting Governor of the State of Oregon, pursuant to Article V of the Constitution of Oregon.

16) Loan means dept financing provided to an approved recipient for eligible purposes.

17) Port means a municipal corporation organized under ORS chapter 777 or 778, which may be known as a "port authority" or "port district."

18) Small Business means a business firm with 49 or less employees.

19) State Revenue Bonds means bonds issued by the State of Oregon that are payable from specific revenue sources and are not a pledge of the full faith and credit of the State of Oregon.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 183.335, 183.341, 183.355, 285A, 285B, OL 1999, Ch. 509

Hist.: EDD 4-2003, f. & cert. ef. 3-26-03; EDD 1-2008, f. & cert. ef. 1-2-08; EDD 11-2008(Temp), f. & cert. ef. 3-28-08 thru 9-23-08; EDD 15-2008, f. & cert. ef. 6-4-08

123-001-0100

Notice Rule (Proposed Permanent Rulemaking)

In proposing to amend, repeal or adopt permanent administrative rules for this chapter, pursuant to ORS 183.335(1)(a) and 183.341(4):

(1) The Department shall at a minimum do the following with respect to those listed in section (2) of this rule:

(a) Furnish a copy of the notice of proposed rulemaking/hearing, as published or to be published in the *Oregon Bulletin* consistent with ORS 183.335(1)(b); and

(b) Make available a copy of the proposed rule language to be amended or adopted.

(2) All of the following are included for purposes of section (1) of this rule:

(a) The current list of persons, organizations and so forth that have requested notification, in accordance with ORS 183.335(1)(c) and (8);

(b) Certain legislators, as prescribed in ORS 183.335(1)(d) and (15);

(c) Department of Land Conservation and Development, consistent with the time frame for subsection (b) of this section, for rules governing any program or activity affecting land use (see Division 008 of this chapter of administrative rules);

(d) The following organizations and media sources, consistent with the time frame for subsection (a) or (b) of this section:

(A) Associated Press;

(B) Association of Oregon Counties;

(C) Capitol Press Room;

(D) League of Oregon Cities; and

(E) Oregon Department of Administrative Services, Director's Office, for any substantial program change not arising directly from legislation; and

(e) Any other media source, person or party interested in or significantly affected by the proposed rulemaking, as determined by the Department, depending on the particular nature and subject of the rules, which might include but is not limited to Economic Development Districts, Port Districts, Public Ports Association, Special Districts Association, Associated Oregon Industries, industry or contractor associations, nonprofit or labor organizations, local newspapers, business publications, local units of government, or state and federal agencies. This subsection may be carried out consistent with the time frame for subsection (a) or (b) of this section.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 183.335, 183.341 & 183.355, ORS 197.040 & 197.180, and Chapters 285A & 285B

Hist.: EDD 4-2003, f. & cert. ef. 3-26-03

123-001-0200

Model Rules of Procedure

(1) Division 001 and any statutorily mandated element in the other divisions of the State of Oregon Attorney General's Uniform and Model Rules (OAR Chapter 137), pursuant to the *Administrative Procedures Act* (ORS Chapter 183), are hereby incorporated into and adopted as part of this division of administrative rules, by reference. These and other relevant documents are published in the Attorney General's "Administrative Law Manual," which may be obtained from the Oregon Department of Justice, Publications Section, Justice Building Room 16, 1162 Court Street NE, Salem, OR 97301-4096.

(2) No internal guidance materials of the Department for purposes of administrative rules are incorporated into or adopted as part of this division of administrative rules, in any way, and such materials are not binding on the rulemaking procedures of the Department except insofar as they coincide with requirements pursuant to section (1) of this rule.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 183.335, 183.341 & 183.355, and Chapters 285A & 285B

Hist.: EDD 4-2003, f. & cert. ef. 3-26-03

123-001-0300

Waivers of Provisions Provided by Rule in This Chapter

The Director or the Director's designee may formally waive requirements otherwise prescribed by this chapter of administrative rules, if such a waiver serves to further the goals and objectives of ORS chapters 285A, 285B and 285C and results in sound economic development or job creation in the state, such that:

(1) The requirement must be an invention of the administrative rule itself, and not arise from policies established by the Commission or from any state or federal law, including cases where state law might in some way be ambiguous, but the administrative rule is considered to correctly and optimally clarify or interpret that law;

(2) This rule applies whether or not the division of administrative rule similarly provides for waiver by the Director; and

(3) This rule does not interfere with other ways to make exceptions or to provide flexibility, as described elsewhere for certain administrative rules, and it is not meant to substitute for the timely amendment of administrative rules.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A & 285B

Hist.: EDD 4-2003, f. & cert. ef. 3-26-03; EDD 1-2008, f. & cert. ef. 1-2-08; EDD 11-2008(Temp), f. & cert. ef. 3-28-08 thru 9-23-08; EDD 15-2008, f. & cert. ef. 6-4-08

Special Roles of the ~~Economic and Community~~ Business Development Commission

123-001-0500

Commission Committees

For purposes of advisory and technical committees for the Commission:

(1) These committees are different from, and this rule does not apply to, statutory boards or commissions affiliated with the Department, but whose appointment, authority, duties and relationship to the Commission, if any, are prescribed (such as the Oregon Arts Commission under ORS 359.010 to 359.137) by the Legislative Assembly.

(2) The committees under this rule, which are part of the Department and are public bodies as subsidiaries to the Commission, consist of Ad Hoc Committees established solely by authority of the Commission and operating at its discretion under ORS 285A.060.

(3) An Ad Hoc Committee (“it” for purposes of this section), as defined in subsection (2) of this rule, is subject to the following parameters:

(a) The Commission must create it by a formal and public action for a certain definite period, or otherwise it may exist and operate until the Commission terminates or suspends it;

(b) The chair of the Commission is primarily responsible for appointing each of its members, which serve at the chair’s pleasure (the Director or designee is always an ex officio member), and for determining its makeup and similarly fundamental attributes;

(c) Its membership shall broadly reflect the different geographic regions of this state, and at least one of its members shall reside east of the Cascade Range;

(d) It shall provide advice and recommendations to the Commission or the Department, although it may exercise, on a day-to-day basis, such duties or powers as the Commission delegates to it;

(e) It is subject to the Commission’s review and to reporting its decisions, actions and agenda for future meetings, which any member of the Commission may attend;

(f) It may adopt standards and procedures for its activities, with or without direction from the Commission; and

(g) Regardless of anything described in this chapter of administrative rules, the Commission reserves the discretion to change any delegation and directive related to its future functions, at any time.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.060

Hist.: EDD 4-2003, f. & cert. ef. 3-26-03; EDD 1-2008, f. & cert. ef. 1-2-08; EDD 11-2008(Temp), f. & cert. ef. 3-28-08 thru 9-23-08; EDD 15-2008, f. & cert. ef. 6-4-08

123-001-0520

Finance Committee for the Commission

The Finance Committee is an Ad Hoc Committee that has been formed and empowered by the Commission in accordance with ORS 285A.060 ~~OAR 123-001-0500~~, such that:

(1) The Commission charges the Finance Committee (pursuant to divisions of this chapter of administrative rules) with the following:

(a) Immediate oversight and the approval of projects and proposals under the following business finance programs:

(A) Economic Development Revenue Bonds (Division 011); and

(B) Oregon Business Development Fund (Division 017);

(b) Consideration on appeal of administrative denials of business loans under the following programs:

(A) Entrepreneurial Development Loan Fund (Division 019); and

(B) Credit Enhancement Fund (Division 021); and

~~(c) Immediate oversight and the approval of projects and proposals and of agreements with port districts under the Port Revolving Loan Fund (Division 030).~~

(2) The Finance Committee's members:

(a) Are appointed by the chair of the Commission to include representation from among this state's banking and financial community, as well as at least one member possessing general experience with a traded-sector industry or industry association; and

(b) Serve indefinite terms at the pleasure of the Commission's chair, such that a newly appointed Commission chair assumes the makeup and organization of the current Finance Committee until the Commission chair initiates changes.

(3) The Commission's chair shall select a chairperson for the Finance Committee, such that:

(a) The chairperson shall call meetings and set agendas for the Finance Committee with the assistance of Department staff; and

(b) A member chosen by the chairperson (or otherwise, the longest-serving member present) shall preside over a Finance Committee meeting at which the chairperson is absent.

(4) The supervisor of the Department's business finance programs shall administer the operations of the Finance Committee, officially carry out its decisions, prepare business for its consideration with the chairperson's consent, and serve as an ex officio member on behalf of the Director.

(5) Nothing in this rule, or elsewhere in this chapter of administrative rules, interferes with the Commission's authority to dissolve the Finance Committee or to redirect its future procedures and purposes.

Stat. Auth.: ORS 285A.075, 285B.056, 285B.206(3) & 285B.743(2)

Stats. Implemented: ORS 285A.060, 285A.666 - 285A.732, 285B.050 - 285B.098, 285B.200 - 285B.218, 285B.320 - 285B.371 & 285B.740 - 285B.758

Hist.: EDD 4-2003, f. & cert. ef. 3-26-03; EDD 1-2008, f. & cert. ef. 1-2-08; EDD 11-2008(Temp), f. & cert. ef. 3-28-08 thru 9-23-08; EDD 15-2008, f. & cert. ef. 6-4-08

Contested Case Procedural Rules

123-001-0700

Purpose, Scope and Definitions

(1) OAR 123-001-0700 to 123-001-0799 establish procedural steps and options for handling appeals, in the manner of a contested case under ORS 183.310 to 183.550, when the Department denies:

(a) An application for either preliminary certification or annual certification to exempt the taxable income of a facility under ORS 316.778 or 317.391 (Division 155 of this chapter of administrative rules), other than when denial results from objection to preliminary certification by the city, county or port; or

(b) Any other application or request for which state law provides for appeal by contested case.

(2) Except as otherwise provided under state law or elsewhere in this chapter of administrative rules, this rule and contested case provisions do not pertain to any other proceeding, hearing, determination or decision by the Department, Director, Commission or any subsidiary body.

(3) OAR 123-001-0700 to 123-001-0799 are intended only to supplement mandatory elements of contested case proceedings under the Administrative Procedures Act for matters specific to the Department. Therefore, OAR 137-003-0501 to 137-003-0700 are incorporated into and adopted as part of this division of administrative rules, by reference.

(4) For purposes of OAR 123-001-0700 to 123-001-0799, unless the context demands otherwise:

(a) "Applicant" means the person (including but not limited to a business firm) that sought approval under section (1) of this rule, as identified in the application form or other submitted materials. This person is thus the affected party or appellant for purposes of the contested case, and the submitted address given in the form is assumed correct for mailing the Notice.

(b) "Notice" means the formal written statement on Department letterhead that the Department initially sends to the Applicant, in accordance with OAR 123-001-0725.

Stat. Auth.: ORS 183.341(2), 183.464(2), 285A.075; OL 2007 Ch. 288, 14(2)

Stats. Implemented: ORS 183.413 - 183.470 & 285C.500 - 285C.506

Hist.: EDD 12-2004, f. & cert. ef. 7-27-04; EDD 1-2008, f. & cert. ef. 1-2-08; EDD 11-2008(Temp), f. & cert. ef. 3-28-08 thru 9-23-08; EDD 15-2008, f. & cert. ef. 6-4-08

123-001-0725

Steps and Reservations of the Department

(1) As described in OAR 123-001-0700, the Department shall send **N**notice to the **A**applicant, such that:

(a) The Department sends **N**notice by registered or certified mail;

(b) If a copy is sent also by regular, first-class mail, it must be so mailed at least five days prior to the **N**notice as described in subsection (a) of this section; and

(c) The Department shall also furnish a copy to the Department of Revenue/county assessor as appropriate.

(2) The **n**Notice, on Department letterhead, shall include but is not limited to the following:

(a) The date and other pertinent facts of the Department's receipt of the application;

(b) Brief explanation of why the Department is unable to approve it;

(c) Reference to the specifically relevant statutory subsection(s) or administrative rule section(s), and further explanation, as warranted, regarding how these references support the Department's conclusion(s);

(d) Statement of the **A**applicant's right to a contested case hearing on the matter before an administrative law judge and to be represented by legal counsel;

(e) Designation of the Department's current file on the application as the record for purposes of proving a prima facie case upon default; and

(f) Instruction on how the **A**applicant must file a written request in order to receive the hearing, such that the request is received by the Department on or before a specified date not less than 30 calendar days after the Notice.

(3) The Department reserves the option (at its sole discretion) to withdraw the proposed denial and grant certification to the **A**applicant for any reason, prior to a final order, including but not limited to the re-submission of a new application or the consideration of evidence that alters the Department's prior conclusion(s), as otherwise allowed under the applicable laws.

(4) Upon default by the **A**applicant, including but not limited to failure to timely file a request for a hearing with the Department, the Department shall promptly issue a final order denying certification, furnishing a copy to the Department of Revenue/county assessor as appropriate.

(5) If the **A**applicant files a timely request for a contested case hearing, the case shall be referred to the Office of Administrative Hearings and a copy of the referral furnished to the **A**applicant, General Counsel and the Department of Revenue/county assessor as appropriate.

(6) The administrative law judge will issue a proposed order, pursuant to applicable proceedings of the contested case hearing, and except as set forth in subsection (7)(a) or (b) of this rule, that proposed order shall become final by order of the administrative law judge not less than 45 calendar days after the issuance of the proposed order.

(7) A proposed order in section (6) of this rule shall not become final if:

(a) The Department gives timely written notification to the parties and the administrative law judge of its intent to alter the findings or effect of the order, subsequent to which it shall issue an amended proposed order and/or final order, as warranted.

(b) Within 30 calendar days from issuance of the proposed order, a party files written exceptions with both the Department and the administrative law judge that concisely present the party's entire argument against the proposed order, and the Department subsequently requests in writing that the administrative law judge undertake further steps. Such steps include, but are not limited to, an official response to the exceptions or the hearing of new or additional evidence.

Stat. Auth.: ORS 183.341(2), 183.464(2) & 285A.075; OL 2007 Ch. 288, §4(2)

Stats. Implemented: ORS 183.413 - 183.470 & 285C.500 - 285C.506

Hist.: EDD 12-2004, f. & cert. ef. 7-27-04; EDD 1-2008, f. & cert. ef. 1-2-08; EDD 11-2008(Temp), f. & cert. ef. 3-28-08 thru 9-23-08; EDD 15-2008, f. & cert. ef. 6-4-08

123-001-0750

Representations by Agency Representative

For purposes of any contested case hearing before an administrative law judge:

(1) Subject to the approval of the office of Attorney General of the State of Oregon under ORS chapter 180, the Director may authorize an officer or employee of the Department to appear on behalf of the Department.

(2) Such a Department representative may not present legal argument on behalf of state government.

(3) The Department retains its full prerogative, with or without intervention by the administrative law judge, to consult with or otherwise involve the office of Attorney General. Such prerogative includes but not necessarily limited to the sole purpose of having the office of Attorney General present legal argument at the hearing or to file written legal argument within a reasonable time after conclusion of the hearing.

(4)(a) "Legal argument" includes arguments on:

(A) The jurisdiction to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to the Department; and

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) "Legal argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

- (A) The application of the statutes or rules to the facts in the contested case;
- (B) Comparison of prior actions of the agency in handling similar situations;
- (C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;
- (D) The admissibility of evidence; and
- (E) The correctness of procedures followed in the contested case hearing.

Stat. Auth.: ORS 183.452(2) & 285B.075

Stats. Implemented: ORS 183.452; OL 2007, Ch. 116, §2

Hist.: EDD 12-2004, f. & cert. ef. 7-27-04; EDD 1-2008, f. & cert. ef. 1-2-08; EDD 11-2008(Temp), f. & cert. ef. 3-28-08 thru 9-23-08; EDD 15-2008, f. & cert. ef. 6-4-08